ORDER:

1 . Challenging the final orders passed by the first respondent in proceedings No. PRS(O)/57/PD/IRD/DA-7, dated 15.04.1999 and to reinstate the petitioner into the service of the bank with all consequential benefits, the present Writ Petition is filed.

2 . The brief facts required for disposal of the Writ Petition are as follows:

The petitioner joined the respondent bank as clerk in the year 1975 and subsequently promoted as Officer. He received a letter dated 23.09.1995 from the second respondent that he committed some irregularities while he was working as Branch Manager, Donkeshwar branch and advising him to submit his explanation within seven days, which he handed over to his Union and kept quiet. It is stated that he received another letter dated 09.05.1996 alleging that he committed irregularities while working in the above branch, which are different from the items mentioned in the earlier letter. Subsequently, he was served with a Charge sheet dated 05.10.1996, which is vague and incomplete without list of documents and list of witnesses, which he handed over to his union and the union submitted reply to the charge sheet on 23.10.1996. Thereafter, an Enquiry Officer was appointed and enquiry was conducted on various dates. The Enquiry Officer submitted his report on 05.12.1998, a copy of which was served on him, stating that the charges are partly proved and gave benefit of doubt to him. Thereupon, the petitioner vide his letter dated 10.01.1999 requested the third respondent to exonerate him from the alleged charges. But, surprisingly, the third respondent passed final orders on 09.02.1999 imposing punishment of compulsory retirement from service, which is basing on no evidence. Aggrieved thereby, the petitioner preferred appeal to the first respondent, but the first respondent passed orders on 15.04.1999 confirming the orders of the third respondent. It is submitted that the departmental enquiry

was conducted contrary to the rules and procedure and the report of the Enquiry Officer was in middle path, which can not be sustained. The orders of the disciplinary authority and the appellate authority are mechanical and without application of mind. No material witnesses were enquired in the enquiry. Hence, the Writ Petition.

3. The respondents filed counter affidavit denying the averments in the petition and stating that the act of petitioner in simply handing over the two letters received by him calling for his explanation, to the Union without ensuring proper reply, shows the inaction of the petitioner. The petitioner himself admitted that the allegations levelled against him in the said two letters are distinct and different, showing his various irregularities. The petitioner actively participated in the enquiry conducted by the Enquiry Officer along with his defence assistant, cross-examined the witnesses and received copies of enquiry proceedings on day to day basis. Many of the allegations were proved in the enquiry. The punishment is proportionate the proved irregularities. The appellate authority has rightly confirmed the punishment. Hence, they prayed to dismiss the Writ Petition.

4. Learned counsel for the petitioner contended that the copies of documents and list of witnesses were not given to the delinquent officer; that the delinquent officer was not aware of the charges levelled against him; that the contents of the charge sheet are vague in view of the fact that the delinquent officer was not in a position to give proper explanation; that no specific allegations are levelled against the petitioner; that non-supply of documents caused prejudice to the case of the petitioner; that material witnesses were not examined; the authors of the documents were also not examined in the enquiry; that all the irregularities, even if taken as correct, they can be at best termed as minor irregularities; that demanding of bribe was not established or proved. Therefore, he prays to set aside the punishment imposed by the disciplinary authority. He also placed

reliance on several decisions, which will be referred to at appropriate time.

5 . The learned standing counsel appearing for the respondents contended that all the documents were made available to the delinquent officer during the enquiry; that the articles of charge would indicate specific allegations levelled against the delinquent officer; since the evidence adduced in the departmental enquiry established beyond proportions and probabilities, question of examination of other witnesses does not arise; that the petitioner has to show in what manner he got prejudiced for non-supply of documents especially in view of the fact that those documents were made available to him; that the documents marked on behalf of the department would itself speak about serious laches and irregularities committed by the delinquent officer; that at the time of marking of those documents, no objection has been raised; that on an elaborate consideration of the matter, the disciplinary authority ordered for compulsory retirement; since it is a case of financial irregularities, it does not deserve to take a lenient view and perhaps, that is the reason why the major penalty has been imposed on the petitioner. Hence, he prays to dismiss the Writ Petition.

6 . Judicial review is a fundamental mechanism for keeping public authorities within due bounds and for upholding rule of law.
In stead of substituting its own decision for that of some other body as happens when on appeal, the court of review is concerned only with the question whether the act or order under attack should be allowed to stand or not. The law is settled that over all proceedings and decisions taken in an administrative matter, the scope of judicial review is confined to the decision making process and does not extend to the merit of the decision taken. In the decision making process, if the authority deciding the case has ignored vital evidence and thereby arrived at an erroneous conclusion or has misconstrued

the provisions of the relevant Act or misunderstood the scope of its jurisdiction, the constitutional power under Article 226 of the Constitution of India can be invoked to set aside such errors.

While examining and scrutinizing the decision making process, it becomes inevitable to appreciate the facts of the given case as otherwise the decision can not be tested under the grounds of illegality, irrationality or procedural impropriety.

7. The disciplinary matters of the employees of the Syndicate Bank are governed by Syndicate Bank Officer Employees' (Conduct) Regulations, 1976 and Syndicate Bank Officer Employees' (Discipline & Appeal) Regulations, 1976. In exercise of powers conferred under Section 19 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, the Board of Directors of Syndicate Bank in consultation with the Reserve Bank and with the previous sanction of the Central Government, made the Regulations. Therefore, the said Regulations are statutory in nature. Regulation no.4 of the Syndicate Bank Officer Employees' (Discipline & Appeal) Regulations, 1976 deals with penalties. Regulation no.6 deals with the procedure for imposing major penalties. Under Regulation 6(3), it is stipulated as follows:

> "Where it is proposed to hold an enquiry, the Disciplinary Authority shall frame definite and distinct charges on the basis of the allegations against the Officer-Employee and under the Articles of Charge, together with statement of allegations on which they are based, shall be communicated in writing to the Officer-Employee, who shall be required to submit within such time as may be specified by the Disciplinary Authority (not exceeding 15 days), or within such extended time as may be granted by the said Authority, a written statement of his defence."

A perusal of the above provisions makes it clear that the disciplinary authority shall make definite and distinct charges on the basis of the allegations against the employee.

8 . Basing on the said Regulation, the counsel for the petitioner contended that the Articles of Charge framed against the petitioner are not definite and specific; that the Articles of Charge are vague and therefore, it caused prejudice to the petitioner. For the said proposition, the learned counsel relied on a decision in *State of Uttar Pradesh v. Mohd. Sharif (dead) through L.Rs.* wherein it is held that non-furnishing of necessary particulars in Charge sheet, non-furnishing of statements of witnesses recorded during preliminary enquiry amounts to denial of reasonable opportunity to the delinquent officer to defend himself at the disciplinary enquiry.

9. The articles of charge framed against the petitioner may be read as follows:

" ARTICLES OF CHARGE-I:

That you were functioning as Manager at our Donkeshwar Branch during the period between 27.06.1994 to 29.07.1995 and that in your position as such, you :-

(1) recommended for sanction/sanctioned/arranged/released credit facilities in the form of -

i. OSLs to a) Sri S.Rajanna and b) Sri I.Bhuma Goud.

ii. Crop ODs to certain farmers on the basis of Pahanis submitted by them; the detailsd of which are as per Annexure I.

iii. Loans under PMRY scheme to Sri K.Tirumala Rao and Sri J.Rajender for setting up dairy units;

iv. Pumpset loan to Sri J.Chennaiah;

v. Twenty loans after receipt of your transfer orders and during the period of handing over charge of the branch to the incoming Manager;

vi. Crop OD facilities to existing borrowers; and

vii. Vehicle loan facility to Sri G.R.Ravinder, Attender of the branch –

a. in excess of per party limit/delegated powers and/or

b. to parties whose earlier loans were overdue/sticky/NPA and/or

c. without properly appraising/assessing the unit cost, etc. and by placing on record false/untrue information and bogus bills/receipts and/or not utilizing RDO's services though provided for such credit appraisals/spot inspection, etc. and by furnishing false/untrue information to DIC and/or

d. by allegedly demanding/exorting/receiving financial consideration in the form of bribe and/or

e. by accepting bogus pahanis containing incorrect/untrue information and/or

f. by not ensuring end utilization and/or

g. to persons residing outside the service area of the branch, and in the process, you committed various other irregularities.

The full/more/exact details are furnished in the Statement of Imputations of Misconduct on your part appended herebelow and the relevant Annexures.

By making available the credit/banking facilities in the manner referred to above, you extended undue financial accommodation to the concerned and gained undue/unlawful pecuniary benefits at the cost of the Bank and caused exposure of huge funds belonging to the Bank to the risks of financial loss, and tarnished fair name/image of the Bank.

It is reported that a sum of Rs.2.14 lakhs (approx.) is overdue under various referred to above showing sticky tendencies.

(2) Received loan applications form (a) 32 Fishermen of Sirpur village through B.C.S.C. Society for sanction of new loans and (b) Sri T.S.Muthenna for renewal of his Crop OD facility, and delayed sanction/rejection of the proposals demanding/receiving bribe for such sanctions.

By your above acts, you failed to discharge your duties with utmost integrity/honesty, devotion and deligence and exhibited conduct unbecoming of the status of a Bank Officer and thuds contravened Regulation No.3(1) read with Regulation No.24 of the Syndicate Bank Officer Employees' (Conduct) Regulations, 1976.

ARTICLES OF CHARGE II

While functioning in your position as Manager of Doekeswar Branch,you-

i) got sanctioned/availed sundry advance in excess of your requirements and delayed submission of bills/reimbursement of the excess sundry advance so availed.

ii) issued cheques drawn on your SB Account without maintaining sufficient balance and knowingly got discounted such cheques and delayed debiting of such discounted cheques to your account when presented.

iii) resorted to undue detention of a cheque for Rs. 6,458/- drawn by M/s. Raja Engineering Works, a customer of the branch when presented for payment.

iv) some of the other staff members of the branch drew also cheques without maintaining sufficient balance in their accounts and got discounted several such cheques. When such discounted cheques were presented for payment, you delayed recording their presentation/ passing for payment or otherwise.

The full/more/exact details are furnished in Statement of Imputations of Misconduct on your part appended herebelow and the relevant annexures.

By resorting to (1) availment of sundry advances in excess; (ii) discounting of cheques without balance by you/other staff members and undue detention of cheques when presented for payment, you violated the Bank guidelines and by misusing your official position gained/caused gaining undue/unlawful pecuniary benefit by self/other staff members/customers of the branch at the cost of the Bank.

By your above acts, you failed to discharge your duties with utmost integrity, devotion and diligence and exhibited conduct unbecoming of the status of a Bank Officer and thus contravened Regulation No.3(1) read with Regulation No.24 of the Syndicate Bank Officer Employees' (Conduct) Regulations, 1976."

10. No doubt, the above two articles of charge do not indicate about the date, time of sanction of loans or crop OD facilities of loans

sanctioned to various borrowers or the date on which he allegedly demanded bribe, etc. In the said articles of charge, it is clearly mentioned that details are furnished in the statement of imputations of misconduct on his part appended below and the relevant annexures. In each item, the date of loan and all other details have been specifically mentioned. So also the imputations would indicate about the crop over draft facilities availed by several farmers. Therefore, it can not be said that the Articles of Charge are vague or not specific with regard to the misconduct attributed to the delinquent officer.

11. The other contention raised by the learned counsel for the petitioner is non-supply of documents caused great prejudice to him in not only preparing the written statement but also in putting forth his defence in the enquiry. For that proposition, he placed strong reliance on a decision in *Kashinath Dikshita v. Union of India & others*, wherein it is held:

> "And such a stance was adopted in relation to an inquiry whereat as many as 38 witnesses were examined, and 112 documents running into hundreds of pages were produced to substantiate the charges. In the facts and circumstances of the case, we find it impossible to hold that the appellant was afforded reasonable opportunity to meet the charges levelled against him. Whether or not refusal to supply copies of documents or statements has resulted in prejudice to the employee facing the departmental inquiry depends on the facts of each case. We are not prepared to accede to the submission urged on behalf of the respondents that there was no prejudice caused to the appellant, in the facts and circumstances of this case. The appellant in his affidavit page 309 of the SLP paper book has set out in a tabular form running into twelve pages as to how he has been prejudiced in regard to his defence on account of the non-supply of the copies of the documents. We do not consider it necessary to burden the record by reproducing the said statement. The respondents have not been able to satisfy us that no prejudice was occasioned to the appellant".

It is further held in the aforesaid decision:

> "The appellant relied on Tirlok Nath v. Union of India 1967 Serv.LR 759 (SC) in support of the proposition that if a public servant

facing an inquiry is not supplied copies of documents, it would amount to denial of reasonable opportunity. It has been held in this case:

"Had he decided to do so, the documents would have been useful to the appellant for cross-examining the witnesses who deposed against him. Again had the copies of the documents been furnished to the appellant he might, after perusing them, well have exercised his right under the rule and asked for an oral inquiry to be held. Therefore, in our view the failure of the Inquiry Officer to furnish to the appellant with copies of the documents such as the FIR and statements recorded at Shidhipura house and during the investigation must be held to have caused prejudice to the appellant in making his defence at the inquiry"."

So, from the above decision, it is clear that the copies of all the documents have to be furnished to the delinquent officer for the purpose of cross-examination of witnesses.

12. The learned counsel for the respondents placed strong reliance on a decision in *State Bank of Patiala & others v. S.K.Sharma*, wherein it is held (para 32).

"We may summarise the principles emerging from the above discussion. (These are by no means intended to be exhaustive and are evolved keeping in view the context of disciplinary enquiries and orders of punishment imposed by an employer upon the employee) :

(1) An order passed imposing a punishment on an employee consequent upon a disciplinary/departmental enquiry in violation of the rules/regulations/statutory provisions governing such enquiries should not be set aside automatically. The Court or the Tribunal should enquire whether (a) the provision violated is of a substantive nature or (b) whether it is procedural in character.

(2) A substantive provision hasnormallyto be complied with as explained hereinbefore and the theory of substantial compliance or the test of prejudice would not be applicable in such a case.

(3) In the case of violation of a procedural provision, the position is this : procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are, generally speaking, conceived in his

interest. Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed. Except cases falling under 'no notice', 'no opportunity' and 'no hearing' categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice, viz., whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively. If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudice including setting aside the enquiry and/or the order of punishment. If no prejudice is established to have resulted therefrom, it is obvious, no interference is called for. In this connection, it may be remembered that there may be certain procedural provisions which are of a fundamental character, whose violation is by itself proof of prejudice. The Court may not insist on proof of prejudice in such cases. As explained in the body of the judgment, take a case where there is a provision expressly providing that after the evidence of the employer/government is over, the employee shall be given an opportunity to lead defence in his evidence, and in a given case, the enquiry officer does not give that opportunity in spite of the delinquent officer/employee asking for it. The prejudice is self-evident. No proof of prejudice as such need be called for in such a case. To repeat, the test is one of prejudice, i.e., whether the person has received a fair hearing considering all things. Now, this very aspect canalsobe looked at from the point of view of directory and mandatory provisions, if one is so inclined. The principle stated under (4) hereinbelow is only another way of looking at the same aspect as is dealt with herein and not a different or distinct principle.

(4) (a) In the case of a procedural provision which is not of a mandatory character, the complaint of violation has to be examined from the standpoint of substantial compliance. Be that as it may, the order passed in violation of such a provision can be set aside only where such violation has occasioned prejudice to the delinquent employee.

(b) In the case of violation of a procedural provision, which is of a mandatory character, it has to be ascertained whether the provision is conceived in the interest of the person proceeded against or in public interest. If it is found to be the former, then it must be seen whether the delinquent officer has waived the said requirement, either expressly or by his conduct. If he is found to have waived if, then the order of punishment cannot be set aside on the ground of said violation. If, on the other hand, it is found

that the delinquent officer/employee has not waived it or that the provision could not be waived by him, then the Court or Tribunal should make appropriate directions (include the setting aside of the order of punishment), keeping in mind the approach adopted by the Constitution Bench in B. Karunakar, (1994 AIR SCW 1050). The ultimate test is always the same, viz., test of prejudice or the test of fair hearing, as it may be called.

(5) Where the enquiry is not governed by any rules/regulations/statutory provisions and the only obligation is to observe the principles of natural justice - or, for that matter, wherever such principles are held to be implied by the very nature and impact of the order/action - the Court or the Tribunal should make a distinction between a total violation of natural justice (rule of audi alteram partem) and violation of a facet of the said rule, as explained in the body of the judgment. In other words, a distinction must be made between "no opportunity" and not adequate opportunity, i.e., between "no notice"/"no hearing" and "no fair hearing." (a) In the case of former, the order passed would undoubtedly be invalid (one may call it "void" or a nullity if one chooses to). In such cases, normally, liberty will be reserved for the Authority to take proceedings afresh according to law, i.e., in accordance with the said rule (audi alteram partem). (b) But in the latter case, the effect of violation (of a facet of the rule of audi alteram partem) has to be examined from the stand-point of prejudice; in other words, what the Court or Tribunal has to see is whether in the totality of the circumstances, the delinquent officer/employee did or did not have a fair hearing and the orders to be made shall depend upon the answer to the said query. (It is made clear that this principle (No. 5) does not apply in the case of rule against bias, the test in which behalf are laid down elsewhere.)

(6) While applying the rule ofaudi alteram partem(the primary principle of natural justice) the Court/Tribunal/Authority must always bear in mind the ultimate and overriding objective underlying the said rule, viz., to ensure a fair hearing and to ensure that there is no failure of justice. It is this objective which should guide them in applying the rule to varying situations that arise before them.

(7) There may be situations where the interests of state or public interest may call for a curtailing or the rule ofaudi alteram partem. In such situations, the Court may have to balance public/State interest with the requirement of natural justice and arrive at an appropriate decision.”

13. Bearing the above principles in mind, it is to be seen whether there is violation of principles of natural justice or procedural irregularities took place in conducting the departmental enquiry in the case on hand.

14. In enquiry proceedings dated 29.11.1996, the Presenting Officer, the petitioner and his defence assiatant were present. Before commencement of the enquiry, the allegations in the charge sheet had been read over, for which the petitioner pleaded not guilty. In the said proceedings, it is clearly mentioned that the Presenting Officer, in response to the advice of the Enquiry Officer, submitted a list of witnesses and documents by whom/which the Articles of Charge levelled against him were proposed to be proved. A copy of the said list of witnesses and documents had been given to the petitioner against his acknowledgement. Therefore, this observation by the Enquiry Officer would make it clear that the list of witnesses and the documents was furnished to the petitioner and the same was acknowledged and signed by him. Further, an opportunity was also given to the petitioner by the said proceedings that the petitioner may inspect the original documents listed in the list of witnesses and documents furnished by the Presenting Officer. Therefore, the petitioner can not turn around and say that copies of the documents were not furnished to him. Since as many as 143 documents were marked, permission was given to the petitioner to go through the original documents. Further, when the witnesses were examined, proper opportunity was given to the petitioner to cross-examine them. As seen from the statements of witnesses, the defence assistant cross-examined the witnesses on behalf of the department at length, and with reference to each of the documents, the defence assistant cross-examined the witnesses. So, it is not a case of denial of any opportunity to cross-examine the witnesses. So, in no manner it would cause prejudice to the defence of the petitioner. Therefore, the petitioner was having full knowledge about the documents marked in the departmental enquiry. Basing on the evidence available on

record, the Enquiry Officer gave the findings. Those findings were based upon some evidence adduced in the departmental enquiry. Therefore, the findings can not be said to be perverse or contrary to the evidence available on record. Therefore, upon appreciation of the evidence on record, both oral and documentary, the Enquiry Officer submitted a report that the charges levelled against the delinquent officer are proved and he failed to discharge his duties with utmost integrity, honesty, devotion, diligence and exhibited conduct of unbecoming to the status of a bank officer and thus contravened Regulation 3(1) read with 24 of the Syndicate Bank Officer Employees' (Conduct) Regulations, 1976. Accepting the Enquiry Officer's report, the impugned proceedings dated 09.02.1999 were passed imposing punishment of compulsory retirement from service.

15. The learned counsel for the petitioner contended that the none of the complainants, who are material witnesses, were examined by the management and so, the petitioner is entitled for benefit of doubt thereof. Perhaps, that is the reason why the Enquiry Officer has given a finding that there is no direct evidence with regard to demanding or taking of the bribe by the petitioner. Out of 7 complaints, 5 complaints have been withdrawn by the respective complainants on the same day by addressing a letter dated 04.12.1996. It is not the case of the petitioner that those complaints have been fabricated or pressed into service to suit the case of the bank. Though non-examination of those complainants as witnesses in the departmental enquiry is fatal to the management, still such non-examination would not vitiate the enquiry because at best, it infers that the department failed to adduce any evidence with regard to demanding or taking of bribe from those complainants. The Enquiry Officer has taken lot of pains in evaluating the evidence and each of the finding has been substantiated with documents and also some evidence. It is not for this Court to substitute the finding of the Enquiry Officer as if sitting over an appeal. Sufficiency or insufficiency of the evidence is not under the scope of the judicial review. So also, while exercising judicial review,

this Court can not reappreciate the evidence. Therefore, under no stretch of imagination, it can be said that the findings are perverse or contrary to the evidence on record.

16. The Enquiry has been conducted by following the procedure contemplated under the Regulation, 1976 after furnishing list of witnesses, copies of documents and affording reasonable opportunity, to the delinquent officer. The delinquent officer, having availed such opportunity to cross-examine the witnesses with reference to the documents relied upon by the department, now can not turn round and say that the enquiry is vitiated. There is evidence adduced by the department to show that the petitioner committed some irregularities regarding sanction of loans, etc.

17. The learned counsel for the petitioner placed strong reliance on the decision in *Enuga Lakshmamma v. Vennapuse Chinna Malla Reddy (died) by LRs* wherein it has been held as follows:

> "… But, apart from these aspects touching the documentary evidence relied upon by the appellant, the High Court found fault with the plaintiff in not examining her own father or her brother who was conducting and looking after the litigation on her behalf and drew adverse inference from said non-examination, particularly the non-examination of her father who would have been the best witness on the issue. The reasons for not examining these two persons as witnesses are not far to seek…"

The decision has no application to the facts of the present case in view of the fact that it is a case where the suit is filed for possession of suit properties and *mesne profits* and the question of determination of age as on the date of deed of surrender and whether the document is valid or invalid if the plaintiff was a minor. Therefore, the principles of Evidence Act have no application in the departmental proceedings as in the case of a civil suit.

18. The only question that remains to be answered in this Writ Petition is whether the punishment imposed is disproportionate to the

proved misconduct. The learned counsel for the petitioner placed reliance on a decision reported in *N.Subramanyam v. Chairman, Visakhapatnam Port Trust and others*, wherein it is held as follows:

> "… Compulsorily retiring the petitioner, by all means, is a major penalty which is imposed on him without there being any positive evidence. The punishment is harsh and disproportionate. Though the petitioner is a workman, when a major punishment is imposed touching on the living condition and offends Article 21 of the Constitution, the remedy under Article 226 is available to such parties, without regard to the availability of any other remedy…"

19. The learned counsel for the respondents placed reliance on a decision in *V.Ramana v. APSRTC & others* wherein it is held as follows: (para 19)

> "For the reasons aforementioned, we are of the opinion that the quantum of amount misappropriated or embezzled by a delinquent official may not be taken into consideration in deciding the adequacy or otherwise of the punishment and the punishment of removal from service for such embezzlement or misappropriation can not be termed as shockingly disproportionate."

In *U.P. State Road Transport Corpn. & others v. A.K.Parul* relied on by the learned counsel respondents, it is held:

> "… It may be open to the appellate authority to interfere with it, but not to the High Court or to the Administrative Trubunal for the reasons that the jurisdiction of the Tribunal is similar to the powers of the High Court under Article 226…"

In an other decision relied on by the learned counsel for the respondents in *Janatha Bazar v. Secretary, Sahakari Noukarara Singh*, it is held: (para 8)

> "In case of proved misappropriation, in our view, there is no question of considering past record. It is the discretion of the

employer to consider the same in appropriate cases, but the Labour Court can not substitute the penalty imposed by the employer in such cases."

In *Director General, Indian Council of Medical Research & others v. Dr. Anil Kumar Ghosh & another* case, relied on by the learned counsel for the respondents, it is held (para17):

"The punishment awarded to him is claimed to be disproportionate to the offence committed by him. We do not agree. The fact that the concerned authorities did not detect the falsity of the claim for about ten years and allowed the same does not help the first respondent to contend that the punishment should be reduced."

In another decision in *Union Bank of India v. Vilshwa Mohan,* which is also relied on by the learned counsel for the respondents, it is held :

"It needs to be emphasized that in the banking business, absolute devotion, diligence, integrity and honesty needs to be preserved by every bank employee and in particular the bank officer. If this is not observed, the confidence of the public/depositors would be impaired."

20. With regard to the scope of judicial review, the learned counsel for the respondents relied on a decision in *R.S.Saini v. State of Punjab & others* wherein it is held (para 19):

"We have noted earlier that the scope of judicial review in matters of this nature being restricted, the High Court had to consider the challenge to the impugned order with a limited degree of scrutiny that was called for. We too have considered the complaint within that limited scope in order to find out the correctness of the allegation that the impugned order of the disciplinary authority suffered from the vice of perversity, non-application of mind and tainted by malice and having come to the conclusion that the report of the inquiring authority can not be faulted with on any of the grounds stated above, we are unable to agree with the appellant".

In another decision in *High Court of Judicature at Bombay through its Registrar v. Shashikant S.Patil & another*, relied on by the learned counsel for the respondents, it is held :

> "… Interference with the decision of departmental authorities can be permitted, while exercising jurisdiction under Article 226 of the Constitution if such authority had held proceedings in violation of the principles of natural justice or in violation of statutory provisions prescribing the mode of such enquiry or if the decision of the authority is vitiated by considerations extraneous to the evidence and merits of the case or if the conclusion made by the authority, on the very face of it, wholly arbitrary or capricious that no reasonable person could have arrived to such a conclusion, or grounds very similar to the above. But, we can not overlook that the departmental authority (in this case the Disciplinary Committee of the High Court) is the sole judge of the facts, if the enquiry has been properly conducted. The settled legal position is that if there is some oral evidence on which the findings can be based, then adequacy or even reliability of that evidence is not a matter for canvassing before the High Court in a writ petition filed under Article 226 of the Constitution."

21. For the proposition that compulsory punishment would not involve in civil consequences for it is a major penalty the learned counsel for the respondents relied on a decision in *Union of India v. Col. J.N.Sinha & another* wherein it is held (para 10):

> "It is true that a compulsory retirement is bound to have some adverse effect on the Government servant who is compulsorily retired but then as the rule provides that such retirements can be made only after the officer attains the prescribed age. Further, a compulsorily retired Government servant does not lose any of the benefits earned by him till the date of his retirement. Three months" notice is provided so as to enable him to find out other suitable employment."

To the same effect, the learned counsel relied on another decision in *Union of India v. M.E.Reddy & another*, wherein it is held:

> "An order of compulsory retirement on one hand causes no

> prejudice to the government servant who is made to lead a restful life enjoying full pensionary and other benefits and on the other gives a new animation and equanimity to the Services."

22. The learned counsel for the respondents further relied on another decision in *Baikunthak Nath Das & another v. Chief District Medical Officer, Baripada & another*, wherein it is held that an order of compulsory retirement is not a punishment; it implies no stigma nor any suggestion of misbehaviour.

23. With regard to the punishment, the learned counsel for the respondents placed strong reliance on a Division Bench decision of this Court in *Chairman and Managing Director, Singareni Collieries Company Limited, Kothagudem, Khammam district & others v. B.V.S. Prasad* wherein it is held:

> "With regard to punishment, the High Court will interfere only if facts disclosed before the Court would warrant application of Wednesbury Rule of arbitrariness and unreasonableness and when the Court finds that the punishment imposed by the disciplinary authority is shockingly disproportionate to the gravity of misconduct established against the delinquent employee."

To the same effect, he relied on another decision in *G.Satyanarayanamma v. Canara Bank, Bangalore & others* wherein it is held:

> "In the circumstances, if the Court were to consider this misconduct of the delinquent employee leniently, it would tantamount to the Court placing misplaced sympathy on an undeserved person".

24. Therefore, from the above decisions, it is clear that unless the punishment imposed is shockingly disproportionate to the proved misconduct, normally this Court would not interfere with the punishment. In view of the serious infirmities and irregularities, the punishment of compulsory retirement was imposed on the petitioner.

So, the punishment imposed by the disciplinary authority, as confirmed by the appellate authority, can not be said to be disproportionate to the proved misconduct. Hence, there are no grounds to interfere with the same.

25. The Writ Petition is devoid of merits and is, accordingly, dismissed. No costs.

(K.C.Bhanu, J.)

05.09.2005

DRK